2015 WL 358499 (La.App. 3 Cir.) (Appellate Brief)
Court of Appeal of Louisiana, Third Circuit.

John Ford DIETZ, Plaintiff-Appellee,

v.

Anne Bennett MORRISON DIETZ, et al., Defendant-Appellant (Richard Morrison).

No. 14-01164-CA.
January 15, 2015.

Civil Proceeding
On Appeal from the Fifteenth Judicial District Court for the Parish of Vermilion, State of Louisiana, Docket No. 88309, Division "B," the Honorable Jules Edwards, III, Judge.

Original Response Brief On Behalf of Plaintiff-Appellee, John Ford Dietz

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MAY IT PLEASE THE COURT:

Plaintiff-Appellee, John Dietz, hereby respectfully submits his Original Plaintiff-Appellee's Response Brief in the captioned matter.

INTRODUCTION AND SUMMARY

In this suit for defamation, extortion, intentional infliction of emotional distress ("IIED"), and civil conspiracy, Plaintiff-appellee, Mr. Dietz, respectfully requests that this Court affirm the Trial Court's judgment of liability based upon a largely Louisiana focused malicious multi-year campaign of persecution.

Defendant Anne Bennett Morrison Dietz did not appeal the *Final Judgment.* This appeal only concerns Defendant Richard Morrison's challenge to the Trial Court's findings of fact and legal determinations.

The Trial Court expressly found that **"Anne Morrison and Richard Morrison were not credible witnesses and were inaccurate historians"** *Reasons for Judgment ("RJ"),* p. 6 *(Appellant's Brief ("App. Bri.")*, Appendix "B"), and found, based upon the extremely extensive witness testimony and qualified expert testimony, that the Morrisons had maliciously engaged in a conspiracy and were jointly and solidarily liable for damages for defamation, extortion, and IIED.

At the six day bench trial, which concluded during January, 2012, almost four full years after the original filing of the complaint in February, 2008, Mr. Morrison and his sister, Mrs. Morrison each had separate Louisiana licensed trial counsel at trial, whereas Mr. Dietz, with the exception of his own direct examination, for which Mr. Dietz hired a lawyer on a limited contract basis, had to represent himself throughout the proceeding due to **financial** constraints.

The arguments Mr. Morrison asserts against the Trial Court's *Final Judgment* (*"Judgment"* (Appendix "A" to *App. Bri.).* largely consist of various assertions of insufficient evidence to support the court's legal factual ***2** determinations and the $85,000 damage award, yet, in fact, an overwhelming, extensive amount of evidence of intentional wrongdoing and malicious attitude on the part of the Morrisons was presented at trial. And, as to the $85,000 lump sum of damages awarded by the Trial Court, it is respectfully submitted that such amount is, in reality, conservatively low considering the extensive evidence of the Morrisons' incredibly malicious, long-running campaign of terror and extortion.

In comparison to the multi-year campaign of persecution against Mr. Dietz, consideration of other court authority, particularly *Tompkins v. Cyr*, 202 F.3d 770, 783, 786 (5th Cir. 2000) ($2.8 Million Dollars for **ten months** of harassment and threats) and *Dubuy v. Luse*, 44,441 (La. App. 2 Cir. 7/15/09), 17 So. 3d 425, 426 ($75,000 for **three months** and three instances of harassment), again, strongly suggests that the $85,000 award is conservatively low.

STATEMENT OF FACTS

The majority of what is asserted as "fact" in the "Statement of the Case" section of Mr. Morrison's brief, and some of what is stated in the "Action of the Trial Court" section of his brief, is disputed by Mr. Dietz on the basis that such is either simply not accurate or mischaracterizes evidence actually presented at trial. However, because of the briefing space limitations and the desire to avoid having to address inappropriate assertions twice, the misrepresentations most substantively pertinent to this appeal will be addressed in the argument section of this brief.

ARGUMENT

I. THE COURT'S EXERCISE OF SPECIFIC JURISDICTION AS TO MR. MORRISON AND THE COURT'S JUDGMENT WAS PROPER

As to his challenge to the Trial Court's exercise of jurisdiction over him, Mr. Morrison, in essence, asserts that the court lacked specific jurisdiction over him with respect to certain **activities** at certain time periods (wrongly described as "claims") mentioned by the Trial Court that supposedly had no connection with the ***3** Louisiana forum. However, the fact is that the Trial Court's *Judgment* as to each of the legal **claims** is well grounded with numerous instances of false, defamatory, damaging and malicious Louisiana directed communications to Mr. Dietz, his father, his wife and his childrens' school principal, as well as many others, who were all Louisiana residents during the pertinent times. *See e.g., RJ,* p. 1-6.

Moreover, specific jurisdiction is "**claim specific**" and therefore must be analyzed with regard to each of the three **claims;** defamation, extortion, and IIED, not each of the various individual activities underlying those claims. See, *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 275 (5th Cir.2006), in which the Court held that specific personal jurisdiction is a ***claim-specific inquiry.***

Thus, the court may properly weigh all the contacts and decide that specific jurisdiction exists as to each **claim** or cause of action; and is not required to conduct an independent jurisdictional analysis of each of the individual *activities* underlying each claim. *Id.* Moreover, all of Mr. Morrison's wrongful actions comprised activities part of his entire, long-continuing, campaign of persecution against Mr. Dietz, and are all **relevant evidence** for consideration, particularly as to morally reprehensible intent, and there is no requirement that each and every one of all of the **activities** giving rise to or simply evidencing a particular **claim** under the campaign of persecution need have occurred in Louisiana.

For instance, Mr. Morrison repeatedly throughout his brief brings this Court's attention to some isolated email or other action of his and argues, in essence, "see, this isn't so bad," "it's relatively innocent," and certainly "doesn't constitute" "extortion" or "intentional infliction of emotional distress," but the problem with Mr. Morrison's argument is that ALL of the wrongful conduct he and his sister were deliberately engaging in against Mr. Dietz as part of the multi-year campaign of persecution may completely appropriately be at least considered.

***4** In addition, the federal court's 2008 very preliminary decision (*Dietz v Dietz,* 2009 WL 2707402 (W.D. La. 2009)) in this proceeding upholding specific jurisdiction almost entirely over Mr. Morrison was based only upon his conduct up to late 2007. **Following** the early 2008 ruling of the federal court as to the existence of jurisdiction as to essentially all of Mr. Dietz's legal claims, **again, following the ruling,** Mr. Morrison, apparently not content with all the actionable conduct he had already engaged in and had been sued for, continued, from 2008 through 2010, his Louisiana situs and victim directed defamation, extortion, and IIED, again, **AFTER** being sued under Louisiana long-arm principles.

A few of many examples: 1) During 2009, Mr. Morrison and/or one of his co-conspirators acting at his direction, sent an incredibly defamatory e-mail to Mr. Dietz's current wife, Iniani, while she and Mr. Dietz were Louisiana residents. II R. 370-72; Tr. Ex. P-7. 2). Also during 2010, Mr. Morrison repeatedly contacted Mr. Dietz's **elderly**, physically ailing father, in Louisiana and, among other actionable conduct, attempted to extort money from Mr. Dietz by threatening exposure to criminal prosecution and imprisonment in Mexico based upon false charges if Mr. Dietz did not comply with demands. IV R. 846-48; 867-68; 758.

Next, even the "out-of-state" activities were "purposefully directed" towards hurting Mr. Dietz, a Louisiana resident, and support the exercise of specific jurisdiction. It is well settled that "[a] court may exercise specific jurisdiction over a nonresident defendant when the defendant has **purposefully directed its activities at residents of the forum state** and the litigation results from alleged injuries that arise out of or relate to those activities." *Enviro. Tech., L.L.C. v. Lonestar Cor. Sers., Inc.*, 2011 WL 3242302, 6 (La. App. 1 Cir. 2011), citing *Helicopteros Nac. de Col., S.A. v. Hall,* 466 U.S. 408, 414 n. 8 (U.S. 1984).

In connection with this inquiry, the court may certainly consider "**all contacts,** whether occurring before or after the filing of the lawsuit, having ***5** relevance to the alleged ongoing tortious conduct, in determining whether Louisiana may assert specific jurisdiction over the defendant." *Enviro., supra,* p. 7. As to the legal **claims,** non-actionable **activities may** be considered in determining wrongful intent, conspiracy, and modus operandi as to the specific Louisiana situs directed and Louisiana resident directed actionable **activities.** *See Id.*

Most all of the out of state conduct, in addition to being focused against a Louisiana resident, Mr. Dietz, meets the foregoing requirements. For example, the defamatory 8 points included within the non-privileged Navajo Nation and other bar complaints (II R. 254), and the other out of state communications were "purposefully directed at" and harmed Mr. Dietz, a Louisiana resident. Moreover, the defamatory 8 points of information was, according to Mr. Morrison, at least partially obtained from Mrs. Morrison, a co-conspirator over whom the court has general jurisdiction and for whom Mr. Morrison testified he was sending the communications. Further, Mr. Morrison encouraged Mr. Bousman, whom Mr. Morrison testified has a "personal vendetta" against Mr. Dietz, to transmit the allegations (8 points) and substance of those false complaints to Mr. Dietz'S father, a Louisiana resident. *FJ,* p. 3. Finally, Mr. Morrison also transmitted the substance, defamatory 8 points, to three Louisiana residents, Albert Dietz, Charlie Fitzgerald, Scott Winstead, in an email. Tr. Ex. P-35.

Consideration of other Louisiana decisions also supports the exercise of specific jurisdiction against Mr. Morrison as to each of the legal **claims.** In *Denmark v. Tzimas,* 871 F. Supp. 261 (E.D. La. 1994), *affirmed* 78 F.3d 582 (5th Cir. 1996), the court held that **one libelous phone call** to a Louisiana resident was sufficient contact with the state. The court in *Denmark* also discussed other cases in which "a non-resident's mere communications into Louisiana" have been held to constitute "acts or omissions" for purposes of the Louisiana long arm statute, LSA-R.S. 13:3201(3). *Denmark, supra,* 871 F. Supp. at 268-9, citing *Kempe v.* ***6** *Ocean Drilling & Exploration Co.,* Civ. A. No. 86-891, 1987 WL 11163, at p. 1 (E.D. La. May 1987) (wire and telephone communications into Louisiana by a nonresident constituted "acts or omissions" sufficient to confer jurisdiction under R.S. 13:3201(3)) (citing *Simon v. U.S.,* 644 F.2d 490 (5th Cir.1981)).

In addition, "we are regularly reminded that Louisiana's long-arm statute is to be liberally construed in favor of the exercise of jurisdiction." *Denmark, supra,* 871 F. Supp at 268-9, citing *Kempe v. Ocean Drilling & Exp. Co.,* 1986 WL 14790, at p. 1. For these reasons, "'Louisiana courts have consistently found its long arm statute applicable, and constitutionally permissible, where **a single act** in Louisiana, by a person or thing for which the non-resident tortfeasor is responsible, **contributes to** the injury."' *Id.* (emphasis added) (quoting *Simon,* 644 F.2d at 497, n. 10). *See also Aucoin v. Hanson,* 207 So.2d 834 (La. App. 1968) (nonresident subjected to Louisiana personal jurisdiction on the basis of an out of state call).

In *Calagaz v. Calhoun,* 309 F.2d 248, 256 (5th Cir. 1962), it was held that **correspondence alone** establishes sufficient contacts with a state to subject a non-resident to a suit in state on a cause of action arising out of the contacts. The Fifth Circuit: 'When the acts **take effect** within the state of the forum, it would seem fair and reasonable for that state to open its courts to the aggrieved person." *id.*

Other cases include *Zidon v. Pickrell,* 344 F. Supp. 2d 624, 627 (D.C. ND 2004) (long-arm jurisdiction upheld for defamation and IIED claims where defendant knew her ex-boyfriend was a resident of the state, knew that **the brunt of the injury** would be felt in that state, directly targeted the forum through emails to state residents containing hyperlinks to the site, and particularly targeted by the defendant); *Brown v. Flowers Indus., Inc.,* 688 F.2d 328, 330 (5th Cir. 1982), *cert, den.,* 460 U.S. 1023 (long-arm jurisdiction upheld under Due Process analysis where non-resident initiated a telephone call to forum, allegedly committed

an intentional tort, and the **injurious effect of the tort fell in forum,** ***7** which non-resident easily could have foreseen); *Banner Prom., Inc. v. Maldonado,* 56 F. Supp. 2d 552 (DC Pa. 1999) (exercise of long-arm jurisdiction held consistent with Due Process where forum state was "focal point" of tortious activity of non-resident def. where intentional tort alleged, plaintiff felt **brunt of harm in forum state,** and def. expressly aimed tortious conduct at forum).

In sum, considering that Mr. Dietz, a Louisiana resident during the pertinent time period, was the "focal point" of all of the tortious activities of the vicious campaign of persecution and that the acts would "take effect" in Louisiana and that the "brunt of the injury" would be felt in Louisiana by a Louisiana resident, the Trial Court properly exercised specific jurisdiction over all of the tortious activities of Mr. Morrison and associated legal claims and could, very appropriately, consider other activities of Mr. Morrison and Mrs. Morrison which clearly were relevant in helping illustrate their morally culpable and actionable intent.

Mr. Morrison, in his brief, is very conveniently for himself failing to factor into his jurisdictional legal analysis his co-conspirator role in the taking of the two boys illegally from Louisiana by Mrs. Morrison (Mr. Morrison provided all money to Mrs. Morrison), Mr. Morrison is also forgetting to mention his co-conspirator role in Mrs. Morrison's other Louisiana focused actionable conduct against Mr. Dietz, which is all pertinent to the long-arm jurisdiction analysis, not to mention the true number of total emails he sent to multiple Louisiana residents (Tr. Exs. P-20, P-21, P-22, P-23, P-24, P-30, P-31, P-32, P-33, P-34, P-35, P-36), some of which were, as a single email, sent at one time to as many as three (3), four (4) and more Louisiana residents (Albert Dietz (Louisiana resident), Charlie Fitzgerald (Louisiana resident), Scott Winstead (Louisiana resident), Tim McNamara (Louisiana resident) and John Dietz (Louisiana resident)), as well as the fact of him actually telephoning Albert Dietz, Mr. Dietz's father, repeatedly over the pertinent 2007 through 2010 time period, telephoning Mr. Dietz's mother in Louisiana, the ***8** threatening co-conspirator communications to Mr. Dietz necessitating Mr. Dietz's January 2007 report to the Vermilion Parish Sheriffs office (Report No. "0543-07" (I R. 67)), Mr. Morrison's having expressly directed Kurth Bousman to "go ahead and blast Albert Sr." in Louisiana (resulting in three (3) additional 2010 Louisiana directed defamatory emails concerning Mr. Dietz by Mr. Bousman to Albert Dietz in Louisiana), Mr. Morrison's non-confidental referenced defamatory correspondence to office St. Peters School in Gueydan, Louisiana, sent to its general fax number at the secretary office, and all of his five plus years of other deliberate persecution of a Louisiana resident, Mr. Dietz, and Mr. Dietz's Louisiana resident family members, not to mention all of the emotional suffering Mr. Morrison intentionally caused in Louisiana to Louisiana resident Mr. Dietz. IV R. 711-12; 714-26; Tr. Ex. P-17, IV R. 758, 861-68; I R. 67-70; IV R. 662-63; Tr. Ex. P-3, P-4, and P-28; IV R. 822-833; II R. 411; V R. 1114-15; Tr. Ex. P-2; II R. 320-40; IV R. 847; IV R. 727-36; II R. 425-30; V R. 941-42; IV R. 736-37; V R. 961-63; IV R. 846-48; Tr. Ex. P-36; V. R. 898-905; III R. 639-42; IV R. 765-71, 769; II R. 364-65; II R. 376-80; IV R. 842-43; IV R. 734-35, 747, 758, 773; IV R. 749-50.

Moreover, it was not only the great volume of Mr. Morrison's Louisiana focused actionable conduct over years of time, but also the substantive vicious magnitude and repetitiveness of his morally reprehensible conduct; Mr. Morrison, often repeatedly, emailed the following false statements regarding Mr. Dietz to, at times, as many as five separate Louisiana residents (Albert Dietz, Mr. Dietz, Fitzgerald, Winstead, McNamara): Dietz 1) has "multiple felony arrest warrants for him" (IV R. 834-35); 2) his "ability to practice law [is, or will be] in jeopardy" (IV R. 834-35; 877); 3) has "no parental rights" (IV R. 838; 878); 4) has "failed in his legal obligations" and "tens of thousands of dollars" in arrears (IV R. 838-39; 843; 851); 5) is in arrears $72,000.00 (IV R. 720; 851; V R. 1034); 6) his ***9** arrearages "would likely qualify as a federal crime" Exs. P-30, P-31; IV R. 722-23; IV R. 838-43; 851-58).

As shown by trial testimony, including the **unrefuted** opinions of Mexican law experts, **Mr. Dietz (1) did *not* have any felony arrest warrants, (2) was *not* without parental rights,** and **(3) was *not* in arrears on child support or alimony and had actually overpaid his support obligations,** and the fact is, *none* of Mr. Morrison's statements were true III R. 475-488; 496-500.

Mr. Morrison also argues in this brief that "[m]any of [Mr. Dietz's Mexico-based **claims** are prescribed" (emphasis added by Mr. Dietz), however, again, Mr. Dietz did not assert any "prior to February 28, 2007" Mexico or otherwise legal **claim** against Mr. Morrison, Mr. Dietz, of course, very appropriately, presented some evidence at trial concerning pre-"February 28, 2007" historical and wrongful **activities** were relevant to the Morrison's wrongful intent and modus operandi as to all the later

Louisiana situs and Louisiana resident focused wrongful **activities** which appropriately do form the factual basis for the legal **claims** of Mr. Dietz.

Lastly, Mr. Morrison's assertion of purported "fact" (*App. Bri.*, p. 12) that Mr. Dietz "never returned to live in Louisiana" after October 2008 and, the associated implication that Mr. Dietz was not a Louisiana resident after October 2008, is not supported by a trial record reference for a reason, it is not true.

II. THE TRIAL COURT APPORTIONED FAULT IN ACCORDANCE WITH LAW BY WAY OF ITS FINAL JUDGMENT EXPRESS INDICATION THAT BOTH WERE "EQUALLY AT FAULT," WHICH IS BOTH THE "DEGREE" OF FAULT AND THE "PERCENTAGE" (50%) PER DEFENDANT, AND, WITH REGARD TO NON-PARTIES, NO SUCH ALLOCATION IS APPROPRIATE UNDER THE FACTS AS PRESENTED AT TRIAL

A. THE TRIAL COURT FOUND "EQUALLY AT FAULT," THUS BOTH THE "DEGREE" AND "PERCENTAGE OF FAULT" (50% EACH) WAS EXPRESSED

The Trial Court did apportion fault as to the Morrisons by "degree or percentage of fault" as required by LSA-C.C. art 2323 by expressly stating in its ***10** *Final Judgment* that the defendants were "equally at fault," which is a statement of both the "degree" of fault per defendant and also the "percentage of fault" (50%) per defendant. *Id.* Therefore, LSA-C.C. 2323 was fully complied with. *Id.*

Moreover, "[a]llocation of fault is a factual determination subject to the manifest error rule." *see also Theriot v. Lasseigne*, 93-2661, at 10 (La. 7/5/94), 640 So.2d 1305, 1313; *Hopstetter v. Nichols*, 98-185, at 8 (La. App. 5 Cir. 7/28/98) 716 So.2d 458, *writ denied*, 98-2288 (La. 11/13/98).

As to the 1986 authority of the Louisiana Court of Appeal, Fourth Circuit, cited by Mr. Morrison, *Perret v. Webster*, 498 So.2d 283 (La. App. 1986), such is not applicable in this instance because, unlike in *Perret*, the Trial Court in this instance expressly allocated both the "degree" and "percentage" of fault and, moreover, the Fourth Circuit more recently indicated in its 2003 opinion in *Oubre v. Eslaih* that possible trial court error as to such was "harmless" where solidary liability is found. *Id.*, 2002-1386 (La. App. 4 Cir. 2/26/03), 840 So. 2d 54.

B. THE TRIAL COURT'S DETERMINATION TO NOT AWARD A "DEGREE" OR "PERCENTAGE" OF FAULT TO NON-PARTIES WAS CONSISTENT WITH THE EVIDENCE PRESENTED AT TRIAL AND OTHERWISE APPROPRIATE

The Trial Court's discretionary determination not to assign any percentage of fault to the Morrisons' agents in wrongdoing is entirely appropriate as such (1) is, clearly, within the fact finding discretion of the trial court; (2) is completely consistent with the great weight of cumulative factual evidence presented at trial as to Mr. Morrison being the central figure, lead actor, and otherwise controlling person as to essentially all the morally reprehensible wrongdoing, particularly the Louisiana directed and Louisiana resident directed wrongdoing; and (3) is consistent with all other involved parties being instructed by, paid by, and/or controlled by Mr. Morrison, such as Reyes Retana and Kurth Bousman. Moreover, it does not appear Mr. Morrison preserved claim of error at trial as to this point.

***11** The Trial Court, in fact, expressly found in its *Reasons for Judgment* that Mr. Morrison and his co-defendant Mrs. Morrison utilized agents and representatives to engage in improper conduct against Mr. Dietz: "These defendants [Mr. Morrison and Mrs. Morrison] enlisted the assistance of various third parties in furtherance of this conspiracy."). *Id.*, p. 6.

It light of the overwhelming evidence presented at trial as to Defendants' direct wrongful action and direction of agents, including Reyes Retana and Kurth Bousman, as to morally reprehensible action against Mr. Dietz, his family, and his interests

otherwise, the Trial Court acted well within its fact finding authority and discretion in determining Mr. and Mrs. Morrison to be, collectively, entirely responsible for the actionable conduct against Mr. Dietz.

As provided for by the Louisiana Supreme Court, "[i]t is well settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of **'manifest error'** or unless it is 'clearly wrong,' and where there is conflict in the testimony, **reasonable inferences of fact should not be disturbed upon review,** even though the appellate court may feel that its own evaluations and inferences are reasonable." *Hebert v. Old Rep. Ins. Co.*, 807 So.2d 1114, ¶ 87 (La. App. Cir. 5 2002), *relying on Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989).

Moreover, "[o]n review, the issue to be resolved is not whether the trial or fact was right or wrong, but whether the factfinder's conclusion was a **reasonable one.**" *Id.*, 807 So.2d at ¶ 87, *relying on*, Lasyone v. Kan. City S. R.R., 786 So.2d 682, 688 (La. Apr. 3 2001). "Further, where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." *Id., relying on Rosell*, 549 So.2d at 844 (La. Sup. Ct.).

In this instance, the evidence presented at trial dictates that fault should not be apportioned to non-parties, such as Reyes Retana and his associates, or even Kurth Bousman, because the Morrisons hired and directed them to harass and ***12** abuse Mr. Dietz, and further, the Morrisons never asserted the affirmative defense of comparative fault or proved such fault at trial as required to hold non-parties at fault. LSA-C.C.P. art. 1005; *Begnaud v. Camel Contrs., Inc.*, 98-207 (La. App. 3 Cir. 10/28/98), 721 So.2d 550, 556, *writ den.*, 98-2948 (La. 2/5/99), 738 So.2d 1.

In fact, at trial, Mr. Morrison called only one witness, Mr. Morrison, who never testified that the actions of Reyes Retana were "a cause in fact of the damage being complained about." *Begnaud, supra*, 721 So.2d 550, 556. In fact, Mr. Morrison lauded Reyes Retana as a "highly regarded attorney," "very competent" (Tr. 705) and "one of the most ethical people I know" (Tr. 771-772). Additionally, Mr. Morrison should not be allowed to duplicitously "honor" Mr. Retana at trial during his testimony and, now, on appeal, make a 180 degree turn and, for the first time, claim all asserted by Mr. Dietz and other witnesses was TRUE and that he should have been apportioned a percentage of fault. *Compare Cavalier v. Cain's Hydrostatic Testing, Inc.*, 657 So.2d 975, 1994-1496 (La. 1995) (factfinder should not be required to quantify fault of tort-feasor no party sees fit to join in the suit).

In fact, as earlier noted, the Trial Court, in fact, expressly recognized that **"Anne Morrison and Richard Morrison were not credible witnesses and were inaccurate historians."** *RJ*, p. 6. One of the many examples of such is as follows:

Mr. Morrison asserted in his brief in the original appeal in this proceeding that "[n]either [Mr. Dietz] nor any of his other witnesses had any direct knowledge of any instructions given by defendants to their Mexican attorneys, so **no evidence** in support of this conclusion was presented." *App. Bri.*, p. 24 (1. 10-13).

And Mr. Morrison, in fact, repeated the same false statement when called as a witness at trial and directly questioned about his personal contacts with Mr. Retana, the Mexican attorney (V R. 929 (line 27) through 931 (line 19)) :
Q. [By Mr. Dietz (pro se representation)]:

Did you give him [Reyes Retana, the main Mexican attorney] legal instructions or tell his what you want done in the case, or let's say *13 play lawyer or something with regard to the case?

A. [Mr. Morrison (Richard Morrison]:

Absolutely not.

Q. (Handing [identified exhibit to Mr. Morrison Mr. Morrison])

Do you recognize your writing to Santiago [one of Reyes Retana associates in Mexico attorney's office] saying, I know that licenciado Reyes Retana does not like me to quote / unquote play lawyer?

A. **[Mr. Morrison (Mr. Morrison)]:**

Yes. This is - - I had forgotten about this.

Q. **Oh, you had forgotten about this. So you're writing to one of Reyes Retana's associates that you know Reyes Retana doesn't like you to play lawyer?**

A. **[Mr. Morrison (Mr. Morrison)]:**

Yes, I know that, he has no - - I guess a lot of contempt for Americans playing lawyer with the Mexican legal system.

Q. **Didn't you just testify that you wouldn't play lawyer, wouldn't give him advice, you wouldn't tell him what to do under Mexican law?**

A. **[Mr. Morrison (Mr. Morrison)]:**

That's right, I would not give him advice, he would take advice.

Q. **And then do [you] also reference next Articulo 173, some additional Mexican law?**

A. [**Mr. Morrison (Mr. Morrison)**]:

Yes and I reference Articulo through 177 as well.

Q. All right. So you reference Articulo 174, 175, 176, 177, and then it's signed with your typed name “Richard”?

A. [Mr. Morrison (Mr. Morrison)]:

Yes, I cut and pasted from the federal penal code in Mexico.

Q. **So you testified five minutes ago that you didn't play lawyer with Reyes Retana and you didn't give him legal advice, but then you're citing Mexican law to him, and stating even, I know licenciado Reyes Retana doesn't like me to quote/ unquote play lawyer,** and those are your quotation marks.

A. [Mr. Morrison (Mr. Morrison)]:

It says wouldn't John Dietz be in trouble for listening. I was asking a question citing Mexican law.

Q. **But you weren't playing lawyer?**

A. **[Mr. Morrison (Mr. Morrison)]:**

I don't consider showing someone the code playing lawyer.

Q. **But you wrote to Reyes Retana's office, if I may: (Reading) Hi, Santiago. I know that licenciado Reyes Retana doesn't like me to quote/unquote play lawyer.**

A. **[Mr. Morrison (Mr. Morrison)]:**

Yes, and I know that he doesn‘t.

Mr. Dietz: No further questions. Your Honor, I'd move --

V R. 929 (line 27) to 931 (line 19)); Tr. Ex. P-37 (admitted at V R. 932).

Thus, **after Mr. Morrison unequivocally testified *“Absolutely not”*** to the **question whether he gave “legal instructions” or told “what you want done” or “play[ed] lawyer” with regard to Reyes Retana, the Mexican attorney,** and ***14** was then **confronted with the fact of *his own email*** to the Mexican attorneys stating that **he “knows Reyes Retana” did not like him to “play lawyer,” Mr. Morrison admits his “Absolutely not” sworn testimony was *NOT true.*** *Id.*

The fact is, Mr. Morrison falsely testified at trial, got caught, not once, but many, many times, by the Trial Court and now is simply engaging in the same pattern of inappropriate representations as to the evidence at trial with this Court.

Mr. Morrison also gave direct instruction to Kurth Bousman, in addition to having him circulate false allegation claiming bar material (8 points) to many, expressly admitted that he expressly indicated to Mr. Bousman “[y]ou are welcome to blast Albert Senior” V R. 961-63, Mr. Dietz's **elderly**, sick father. (V R. 902).

III. AS THE TRIAL COURT IN ITS FACT-FINDING ROLE DETERMINED, “CONSPIRACY” WAS PROVEN BY WAY OF THE EXTENSIVE EVIDENCE OF SUCH AT TRIAL

Mr. Morrison argues as his third challenge to the Trial Court's Final Judgment, that, incredibly, **“NO EVIDENCE** WAS PRESENTED OF AN ACTUAL CONSPIRACY.” *App. Bri.*, p. 13. Both Mr. Morrison's factual assertion and associated legal argument are without merit.

First, as to the Trial Court's fact finding of “conspiracy,” “[i]t is well settled” that an appellate court may not set aside a trial court's finding of fact in the absence of **‘manifest error’** or unless it is **‘clearly wrong,’** and where there is conflict in the testimony, **reasonable inferences of fact should not be disturbed** upon review. *See e.g., Hebert,* 807 So.2d at ¶ 87, *relying on Rosell,* 549 So.2d at 844.

In *Chrysler Credit Corp. v. Whitney Nat. Bank,* 51 F.3d 553, 557 (5th Cir. 1995), the Fifth Circuit, applying Louisiana law and, specifically, Article 2324, discussed the nature of civil conspiracy as follows:

He who conspires with another person to commit an intentional or willful act is answerable, in solido with that person for the damage caused by such act. The unlawful act is tortious conduct. *Cust v. Item Co.,* 200 La. 515, 8 So.2d 361 (1942), *ovr'd in part, 9 to 5 Fashions v. Spur.,* 538 So.2d 228 (La. 1989). The action is for damages caused by acts committed pursuant to a ***15** formed conspiracy, and all of the conspirators will be regarded as having assisted or encouraged the performance of those acts. *Nat. Un. Fire Ins. Co. v. Spillars,* 552 So.2d 627, 634 (La.Ct.App.1989). **The plaintiff must therefore prove an unlawful act and assistance or encouragement that amounts to a conspiracy. Id. This assistance or encouragement must be of such quality and character that a jury would be permitted to infer from it an underlying agreement and act that is the essence of the conspiracy.** *See Silver v. Nelson,* 610 F. Supp. 505, 517 (E.D. La. 1985).

Chrysler Credit, 51 F.3d at 557 (emp. added). Thus, one need merely prove an unlawful act and assistance or encouragement that amounts to a “conspiracy.” *Id.*

Conduct that "reasonably" (Louisiana appellate standard such to warrant Trial Court factual judgment being upheld) supported the existence of a "conspiracy" included that fact that in the defamatory emails to Louisiana residents, including Mr. Dietz, "Mr. Morrison refers to himself and Mrs. Morrison Dietz as "us" and "we," states that he and Mrs. Morrison 'are fully prepared to play hardball,' and further makes clear that the allegedly defamatory statements, the statements made with the purpose of causing emotional distress, and certain of the alleged extortionate communications are made by Mr. Morrison with the understanding and involvement of Mrs. Morrison." *Id.*

As such, after review of the evidence **only as of 2007,** the federal court concluded that "a *prima facie* case has been made that Article 2324 has application in this case, such that Article 2324 could, potentially, operate to permit a court or jury to conclude Mrs. Morrison Dietz "conspired," as contemplated by Article 2324, with Mr. Morrison to defame plaintiff, inflict emotional distress on plaintiff, and extort him." *Id.;* see, e.g., the September 14, 2007 email of Mr. Morrison, stating "now we will need to take more assertive actions" against Mr. Dietz (emphasis added); and the November 6, 2007 email of Mr. Morrison to three Louisiana residents (Mr. Dietz, Albert Dietz, and Scott Winstead), stating "**us,**" being he and Mrs. Morrison Dietz, are to take further threatened action; "**we**" are ***16** prepared to take "additional and stronger actions" and "**we**" are fully prepared to play "hardball" extremely swiftly and aggressively." *Id.* (Emphasis added.)

After the federal court's ruling regarding long-arm jurisdiction, Mr. and Mrs. Morrison, **astonishingly,** together engaged in **additional** Louisiana situs and Louisiana victim directed defamatory, emotionally distressing, and extortionate conduct from 2008 thru 2010, all of which evidence was introduced and recognized by the Trial Court at trial. IV R. 867-68; IV R. 736, 758. Tr. Ex. P-25.

The court also accurately noted that "Mr. Morrison **assisted** Anne Morrison with the drafting of a letter to a U.S. State Department Official, containing versions of these [defamatory and untrue] allegations." *RJ,* p. 3. This was correct; Mr. Morrison admitted that he did assist in drafting the letter. V R. 991. The court further noted that Mr. Morrison "had no personal knowledge of any facts that would support those allegations, and that this information was provided by his sister." *FJ,* p. 3. Mr. Morrison admitted that most of the defamatory information (8 points) was second-hand from his sister. IV R. 881, 890; V R. 920.

Furthermore, the Morrisons jointly prepared a false written statement that Mr. Dietz had kidnapped Angus and violated court child support orders, which Mr. Morrison used to prepare the 8 point false and defamatory correspondence to U.S. and Mexican officials and Bar licensing authorities. II R. 426-30. In fact, Mr. Dietz's Exhibit 25, a Bar Complaint to the Navajo Nation penned and signed by Mr. Morrison, states **"[o]n behalf of my sister, Anne Bennett Dietz, and myself, I'm writing to report an extensive pattern of attorney misconduct and illegal activities..."** Tr. Ex. P-25; IV R. 736. Mr. Morrison admitted Mrs. Morrison reviewed the Bar complaints for him. VR 912. Mr. Morrison also admitted in an email to Kurth Bouseman that he, incredibly, had 'no evidence' regarding the outrageous accusations, 'just suspicions"' Tr. Ex. P-42; V R. 983-985).

***17** Finally, Albert Dietz testified that the emails and telephone calls of Mr. Morrison were on behalf of Mrs. Morrison, as Mr. Morrison stated in the emails and said verbally during the telephone calls: **"I knew that he was working on behalf of Anne and himself,** but it was both, it was Richard and Anne who were both pursuing what I viewed as an attempt to collect money from [plaintiff]" and I knew this because "it was clear that... they were not threats that he was making for himself. He was making them for Anne." And, he "absolutely" was writing the emails on behalf of Mrs. Morrison. (IV R. 866-67; 742). Regarding these emails, Mr. Morrison expressly admitted at trial: "Question: **You were sending these demands on behalf of your sister?** Answer: **Yes.**" (IV R. 891-92). Mr. Morrison further testified at trial that he and his sister would **talk on an almost "daily basis"** over the years pertinent to the legal claims. *Id.*

As provided by this Court in a 2009 opinion, "[the] conspiracy may be evidenced by 'actual knowledge, overt actions with another, such as arming oneself in anticipation of apprehension, or inferred from the knowledge of the alleged co-conspirator of the impropriety of the actions taken by the other co-conspirator."' *Owens v. Byerly,* No. 09-262, ¶ 59 (La.App. Cir. 3 10/07/2009), *quoting Crowder v. Morris,* 98-673, pp. 2-3 (La.App. 3 Cir. 10/28/98).

IV. THE TRIAL COURT'S EXTORTION DETERMINATION IS IN COMPLETE ACCORD WITH APPLICABLE LAW AND THE EVIDENCE PRESENTED AT TRIAL

Mr. Morrison's argument that the Trial Court's factual finding of extortion and associated damage award are improper should be rejected. First, his extortion argument is incorrect because the tort of civil extortion is included under Civil Code article 2315 ("Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."). *See id.; see also Schlesinger v. ES & H, Inc.*, CIV.A. 11-294, 2011 WL 5182716 (E.D. La. Oct. 28, 2011) ("If defendants committed civil conspiracy and extortion against plaintiff, then that ***18** would be a violation of La. Civil Code 2315.") Also of note, the Supreme Court recognized long ago that a claimant who suffers emotional injury due to violation of a criminal statute, in that case, extortion, has a cause of action under article 2315. *Tuyes v. Chambers*, 144 La. 723, 731-32, 81 So. 265, 268 (1919) (victim of blackmail or extortion had a cause of action for emotional distress under LSA-C.C. art 2315); *accord*, *Pack v. Wise*, 155 So. 2d 909, 913 (La. App. 3d Cir. 1963) *writ refised*, 245 La. 84, 157 So. 2d 231 (1963) (alleged debtor had right to be free from unreasonable coercion and unreasonable violations of his right to privacy in his personal affairs, and was entitled to general and special damages in tort under article 2315 for such); see also Quina v. Robert's 16 So.2d 558, 561 (La. App. Orleans 1944) (the court held that a letter written to the plaintiff's employer by the defendant in an effort to coerce [extort] payment of a debt from the plaintiff, was an actionable tort under Article 2315. The court noted: "Art. 2315 of our Code is broad in its scope and contemplates redress to all who suffer injury as a consequence of the commission of an offense or quasi offense."). Further, as the U.S. Dist. Court stated in *Schlesinger v. ES & H, Inc.*, WL 5182716, 2 (E.D. La. 2011): "If defendant committed civil conspiracy and extortion against plaintiff, then that would be a violation of La. Civil Code 2315." *Id.; see also Gulf States Land & Dev., Inc. v. Ouachita National Bank*, 619 So.2d 1031, ¶¶ 17, 47, 51 (La.App. Cir. 2, 1993) (plaintiff-borrowers argue ... by their timely filing of the extortion claim against the other defendant who allegedly conspired").

Mr. Morrison's argument is simply without merit in light of article 2315. Additionally, Mr. Morrison's argument that "pursuing legal recourse is not extortion under Louisiana law" is equally misplaced because it fails to take into account that **Mr. Morrison and his sister did *not* simply "pursue legal recourse."** Mr. Morrison and his sister, despite having Louisiana attorneys from early 2007 through trial, systematically over a multi-year lengthy period of time ***19** **coupled** the threat of disgrace, humiliation, and harm by way of claims of criminal activity and threats of criminal prosecution and otherwise, as well as exposure to various other actions, **with** the demand for money and property they were not entitled to constitutes **extortion.** *See*, LSA-R.S. 14:66.

Extortion may be established by way of false or true statements and need only tend to expose one to humiliation or harm or otherwise **exploit** some fear. *See LSA-R.S. 14:66; Burnham Broad. Co. v. Williams*, 629 So.2d 1335 (La. Ct. App. 4 1993) ("Extortion" includes activities which tend to **exploit** fear of victim, and thus inducing party to give up any property right because of fear of economic loss qualifies as extortion); *State v. Hingle*, 677 So.2d 603 (La. Ct. App. 2 1996) ("Extortion" is defined as communication of threats to another with intent thereby to obtain anything of value or advantage; threat to accuse individual threatened or any member of his family of any crime shall be sufficient to constitute extortion.).

In Mr. Morrison's brief he next incorrectly claims Mr. Dietz "seriously misquoted" one, of probably 15 or so emails, considered by the Trial Court at trial in one form or another, uses an isolated snippet of one email and then, in essence, tries to re-try to case by arguing what he stated in the email was simply a "sincere expression" of Mr. Morrison's desire to consider the entire "family dynamics for the sake of the quality of the grandparent's future relationship with their children." *App. Bri.*, p. 16. Nonsense, Mr. Morrison, incredibly, would like to essentially re-try the six day bench trial by pointing to an extremely isolated piece of evidence and twisting such to attempt to persuade this Court that he simply was good natured and trying to achieve family harmony by communicating all his repeated lies and mischaracterizations to Mr. Dietz's father. *App. Bri.*, p. 16.

Moreover, the Trial Court found, the Morrisons "formed the specific intent that their actions cause Mr. Dietz to suffer severe emotional distress." *RJ*, p. 6.

***20** Mr. Morrison continues throughout his brief arguing individual points which the Trial Court expressly found against him, for instance, on page 16 of his brief, he asserts that his email statement that Mr. Dietz "had no parental rights - at the moment - was true or substantially true," yet, NOT TRUE, the statement was neither "true" nor "substantially true." The fact is Mr. Dietz always had enforceable parental rights including, but not limited to, unlimited rights of visitation, with regard to Albert and Angus, who lived full-time with Mr. Dietz and his second wife from 2002 through trial in 2012, except for four months in 2007.

Mr. Morrison next argues "[Mr. Dietz] suffered no damages" *App. Bri.*, p. 17. Again, not true, the trial court expressly found otherwise by way of the extensive evidence presented at trial. *RJ*, p. 5 ("This particular method of extortion by Mr. Morrison and Ms. Morrison, coupled with Mr. Morrison's harmful conduct directed towards the plaintiffs father was outrageous, extreme and calculated to (and did in fact) cause [Mr. Dietz] to suffer severe emotional distress.").

Moreover, stress damages are exactly what extortion is generally intended by the wrongdoer to cause the victim to suffer. Mr. Morrison's argument that there was "no damages" and, therefore, "there can be no tort" should be summarily rejected. *See e.g.*, *Rosell*, 549 So.2d at 844 ("manifest error" standard).

V. THE TRIAL COURT'S IIED DETERMINATION IS WELL SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL

Mr. Morrison is, again, simply not accurately representing the great weight of pertinent evidence presented at trial and, again, seeking to have this Court act as a second factfinder, as opposed to applying the appropriate "manifest error," "clearly wrong" standard of appellate review. *See e.g.*, *Rosell*, 549 So.2d at 844.

Additionally, Mr. Morrison is, at times, simply making clear misrepresentations to the Court, such when he expressly represents to this Court on page 20 of his brief that "[n]o evidence was presented that Richard was ever ***21** represented by or had any substantive dealings with a Mexican attorney." *Id.* As the quoted testimony earlier in this brief (p. 13-14) establishes; **"after Mr. Morrison unequivocally testified "*Absolutely not*" to the question whether he gave "legal instructions" or told "what you want done" or "play[ed] lawyer" with regard to Reyes Retana, the Mexican attorney, and was then confronted with the fact of *his own email*, Mr. Morrison admits his "Absolutely not" sworn testimony was *NOT true.*** V R. 929 (1. 27) to 931 (1. 19), 932; Tr. Ex. P-37.

The fact is, Mr. Morrison falsely testified at trial, got caught, not once, but many, many times, by the Trial Court (which, again, found Mr. Morrison a "not credible witness" and an "inaccurate historian") and now is simply engaging in the same pattern of inappropriate representations with this Court in his brief.

The actual "fact" is that the Morrisons' activities were without question "'atrocious and utterly intolerable in a civilized community,"' without question were intended to cause "severe stress," and, without question, did cause "severe" stress. *See RJ*, p. 2-6. As found, "Mr. Morrison's harmful conduct directed towards [Mr. Dietz's] father [in Louisiana] was outrageous, extreme and calculated to (and did in fact) cause [Mr. Dietz] to suffer severe emotional distress." *RJ*, p. 5.

In *Taylor v. State* 617 So.2d 1198, 1204 (La. App. 3 Cir. 1993), the Third Circuit held that a defendant's conduct in **instigating a criminal investigation** against the plaintiff for his own purposes **was outrageous and extreme.** The Court held: "We recognize a **legally protected right to be free from serious, intentional invasions of mental and emotional tranquility.**" *id.*, at 1204; *see also White v. Monsanto*, 585 So.2d 1205, 1209 (La. 1991) ("Conduct which, viewed as an **isolated incident,** would not be outrageous or would not be likely to cause serious damage, can become such when **repeated over a period of time.**" *Id.* (*citing* Rest. (Second) of Torts § 46, Com. (j) (the **intensity** and the **duration of the distress** are factors considered in evaluating a **pattern of conduct for IIED**)).

***22** Pursuant to the foregoing authorities, the Trial Court correctly held that the conduct of the Morrisons detailed throughout the opinion "was outrageous and extreme and caused the plaintiff to suffer severe emotional distress." *RJ*, p. 5-6. Among the

extensive egregious conduct was Mr. Morrison during 2010 asserting threats of great bodily harm and death as to Mr. Dietz to his ailing father Albert Dietz. (IV R. 867-68; IV R. 758). Also incredibly egregious was the fact of Mr. Morrison, in conjunction with Mr. Morrisons email falsely asserting Mr. Dietz had no rights, refused to allow Mr. Dietz to see or speak to his children, WHO HAD LIVED WITH MR. DIETZ AND INIANI FULL TIME since 2003 through the time of trial (except four month 2007 period). IV R. 864-65; 724. Mrs. Morrison also told the children that Mr. Dietz was "an international fugitive," which caused extreme distress to both Angus and Mr. Dietz. *RJ*, p. 4-5; II R. 329-31; IV R. 871. The Morrisons authorized their Mexican attorney to use "intense tactics." *Id.*, II R. 430-36; 439. Further, Mrs. Morrison transmitted **death threats.** *RJ*, p. 5. Tr. Ex. P-29; IV R. 764-65; III R. 592. The attorney Nicolas Shaheen testified "Mr. Dietz received **many threats of death** by Mrs. Morrison." *Id.* Mr. Dietz was also told by an agent of Mrs. Morrison, with her and Mr. Dietz on the phone, "**how would you like to have a '45' [caliber gun] against your head**" IV R. 746-47.

On January 2, 2009, the Morrisons "anonymously" sent a defamatory and devastatingly cruel e-mail to Mr. Dietz's Louisiana resident wife, Iniani:
Listen pobrecita. Your husband is a evil, evil man. You must protect yourself and your little girl. He cheats on you just like he cheats on his first wife and he is a big fat liar. Oh yes, he was in bed with me many times when he calls you on his cell phone and laughed about it later. All he cares about is money. He tells me the only reason he marries you and made a baby quickly was so he can buy property in Mexico. He says he hates your fat thighs and he would leave you to be with me just as soon as he got what he wanted. But now I think that is a lie. I find another woman here he tells the same thing and he has a little girl with her too. Ask that liar about his fun times in Las Vegas. Ha ha. Maybe he tells you he was in Arizona. Did you think all his long trips are for business? I can see him while he say he has no idea what you are talking about. Ha, ha. His face will be very red.

***23** He told me he was paying me no more money and so you must now know the truth. That dog will say anything to get what he wants but i am sure you know that. Good luck but do not contact me.

Trial Exhibit P-7; II R. 370-72.

On October 8, 2009, Mr. Morrison sent to Mr. Dietz an email in which she stated: "I WILL Take care of you /what ever [sic] it takes! [All I am thinking] how is the BEST way to kill him [Mr. Dietz]." IV R. 764-65; V R. 940, Pl.'s Ex. 29.

During January of 2010, Mr. Morrison, again contacted Albert Dietz, Mr. Dietz's ailing father, by telephone at his home in Vermilion Parish, Louisiana. IV R. 846-48; 861. Also during 2010, on at least two occasions, Mr. Morrison proceeded to harass and intimidate Albert Dietz in Louisiana with comments and threats about how bad [Louisiana resident] Mr. Dietz was and how if Mr. Dietz did not change and work out a settlement to Mr. Morrison's satisfaction, he would be put in jail, suffer physical abuse, and suffer other harm and embarrassing exposure to authorities. IV R. 846-48; 867-68; IV R. 758.

Albert Dietz also testified that Mr. Morrison, during 2010, called Albert Dietz in Louisiana threatening that Mr. Dietz was facing "dire consequences" if the demands were not complied with, with "dire consequences" meaning **death** (IV R. 867-68; IV R. 758; IV R. 867-68. When asked at trial: "He [Mr. Morrison] did threaten death?" Albert Dietz answered "Absolutely, yes." IV R. 867-868. Mr. Morrison also argues that Mr. Dietz did not prove that they "desired" to cause plaintiff severe distress. Regarding a defendant's intent to cause severe emotional distress, the Third Circuit in Taylor, *supra*, noted that **harmful intent** may be presumed from the outrageous conduct of a defendant, which may show that the defendant **knew or was "recklessly indifferent,"** to the effect of actions. *Taylor v. State* 617 So.2d 1198, 1204 -1205 (La. App. 3 Cir. 1993).

***24** As in *Taylor*, harmful intent may be presumed from Mr. Morrison's outrageous and lengthy course of vicious defamatory, threatening, and abusive conduct with precisely the intent to cause severe emotional distress. V R. 902-03.

Further, Mr. Morrison expressly admitted that he **knew** he was causing pain, having stated in his email of September 7, 2007 to Albert Dietz: "I feel sorry for the pain this must be causing you and your family..." *FJ*, p. 2; Tr. Ex. p-31; IV R. 837-39. Mr.

Morrison also intended to cause pain emotional distress to Mr. Dietz's family. Mr. Morrison **admitted** he expressly indicated to Kurth Bousman in writing to **"go ahead and blast"** Mr. Dietz's **elderly**, sick father. (V R. 902).

It became clear that Mr. Morrison enjoyed causing emotional distress to Mr. Dietz and his family. As Mrs. Morrison stated in her December 18, 2009 email to her brother "[Mr. Morrison] **Rich, I almost think you're really having fun.**" (V R. 945); Tr. Ex. P-39. Indeed, in an email dated February 2, 2010, **Mr. Morrison congratulated himself on his "carrot-and-stick approach"** in his communications with Mr. Dietz. (V R. 1002-03; Tr. Ex. P-50; Tr. Ex. P-36.

Additionally, due to their false accusations of crimes, the Morrisons' harmful intent is presumed. "In Louisiana accusation of a crime is considered defamatory *per se.*" *Cluse v. H & E Equip. Servs., Inc.*, 2009-574, 15 (La. App. 3 Cir. 2010), 34 So.3d 959, 970, citing *Redmond v. McCool*, 582 So.2d 262, 265 (La. App. 1st Cir. 1991). "Generally, defamation *per se* creates a **presumption of falsity** and **malice** which the defendant bears the burden of rebutting." *Id.*

Finally, Mr. Morrison argues, without citation of authority, that Mr. Dietz did not submit medical evidence ("[Mr. Dietz] offered no testimony of any doctor, therapist, or any type of trained mental health professional") as proof of his severe distress, and therefore cannot recover. *App. Bri.*, p. 18. However, it is well established in Louisiana that medical evidence is not required to prove severe emotional distress: "Severe and debilitating emotional distress need not be proven ***25** by clinical diagnosis in order for a claimant to recover related damages." *Guillot v. Daimlerchrysler Corp.*, (La. App. 4 Cir. 2010), 50 So.3d 173, 193, quoting *Dickerson v. Lafferty*, (La. App. 2 Cir. 2000) 750 So.2d 432, 434. Testimony of plaintiff alone is sufficient to establish severe emotional distress. See, e.g., *Monk v. St. ex rel. DOTD* (La. App. 3 Cir. 2005), 908 So.2d 688, 697 (plaintiff who did not seek medical attention established severe emotional distress by her testimony).

In the instant case, as detailed in Mr. Dietz's appellant's brief, numerous witnesses testified at length as to Mr. Dietz's extreme emotional distress, including Mr. Dietz's wife (II R. 336-39; 364-65; 376-80); Mr. Dietz's mother (III R. 615-17); Mr. Dietz's brother (III R. 639-40); Mr. Dietz's father (IV R. 836; 840-44; 858-60; 867) and Mr. Dietz (IV R. 725-26).

Mr. Dietz's wife, Iniani, testified in detail about the *severe distress, constant stress, forgetfulness and weight loss* suffered by Mr. Dietz due to the outrageous, extreme and continuing conduct of the Morrisons. (II R. 336-39). Iniani further testified that **Mr. Dietz was short tempered, crunching his teeth, "start walking like crazy everywhere around," "don't eat right," "didn't sleep well," "been [staying] up all night," "waking up super early," "not resting enough," "not in peace." "it's too much."** (II R. 364-65).

Mr. Dietz himself testified that it was a **"nightmare"** for him and his family and that he was **"just going crazy, as a father who couldn't talk to his kids, as a father who was worried about, frankly, the children being back with an abusive mother."** (IV R. 725-26; 769; 822-23; 864-65). Additionally, Mr. Dietz's stress and worry regarding his kids and being barred from contacting them was particularly extreme because, Mrs. Morrison an admitted cocaine addict and criminally convicted for emotional and physical child abuse. II R. 319-30; III R. 581-83; V R. 1015-16. Mr. Dietz expressed his distress and frustration over the Morrisons' defamatory 8 points circulated to third parties. IV R. 734-35; 773. Mr. ***26** Dietz also noted that the abuse had caused **memory problems** and he could **no longer function well as a lawyer.** IV R. 734-35; 766-69; 773. Mr. Dietz had to **withdraw from representation of clients** due to extreme emotional distress. IV R. 749-50; Tr. Ex. P-28. Regarding continuing threats of prosecution and harm, Mr. Dietz testified that he was **"tortured"** and **"persecuted"** (IV R. 769-771; 747; 758) and: **"It's debilitating. The constant fear... you can't deal with it."** (IV R. 758).

VI. THE TRIAL COURT'S AWARD OF DAMAGES IN RELATION TO THE DEFAMATION WAS PROPER.

First, Mr. Morrison is simply trying to smokescreen the evidence at trial and shoehorn bits of testimony to try to convince this Court that his assertion that Mr. Dietz was, in fact, an "international fugitive" and had "multiple felony arrest warrants" and that such was, at least, "substantially true." App. Bri., p. 22. The actual reality of the evidence before the Trial Court was, (1) at the time Mr. Dietz decided during April 2006 to return to Louisiana, in no way, shape, or form had Mr. Dietz been charged with

or even threatened with any criminal prosecution, much less having been charged with any crime; (2) at no time, either during 2006 of thereafter was Mr. Dietz ever "someone who fled to avoid prosecution;" (3) witnesses qualified as Mexico criminal and civil law experts familiar with all that occurred in Mexico testified at the trial in Louisiana that, again, in no way, shape, or form was Mr. Dietz ever an "international fugitive"; (4) the same Mexico qualified criminal and civil law experts established that the legal use of the word "delito" in Mexico does not have the meaning of the word "felony" in the U.S. legal system and (5), as was expressly testified to at trial, there was nothing legally legitimate under Mexican law ever establishing that Mr. Dietz had any lawful "arrest warrant" or apprehension against him. *See e.g.*, *Rosell*, 549 So.2d at 844.

Additionally, as to the word "delito" in the Mexico legal system, as was testified to at trial by way of expert qualified testimony, the inadvertent kicking of ***27** a soccer ball through a neighbor's window is a "delito" in Mexico, which, of course, such conduct would not amount to a "felony" in the U.S.

As to Mr. Morrison's legal challenge more generally, an award of damages in a defamation case is left to the great discretion of the trier of fact and should not be disturbed absent a showing of manifest error. *Steed v. St. Paul's*, 728 So.2d 931 (La. App. Cir. 1999); *Garrett v. Kneass*, 482 So. 2d 876 (La. App. 2d Cir. 1986).

Damages for defamation include both special damages and non-pecuniary or general damages. *Steed*, supra; *Lege v. White*, 619 So.2d 190 (La. App. 3d Cir. 1993). *Henderson v. Guillory*, 546 So. 2d 244 (La. App. 2d Cir. 1989), *writ denied*, 551 So. 2d 635 (1989). "The injury resulting from a defamatory statement may include non-pecuniary or general damages such as injury to reputation, personal humiliation, embarrassment, anxiety, hurt feelings, and mental anguish and suffering even when no special damage such as loss of income is claimed." Costello v. Hardy, 03-1146, p. 14 (La. 1/21/04), 864 So.2d 129, 141; *Henderson*, supra; *Lege*, 619 So. 2d at 191. As to defamation damages, there is no need to establish the actual pecuniary value of the injury suffered. *Gertz v. Welch, Inc.*, 418 U.S. 323 (1974); *Trahan v. Ritterman*, 368 So.2d 181 (La.App. 1st Cir. 1979).

Albert Dietz also testified that he "witnessed extreme agitation and concern on [John's] part, particularly when we got into the fact about Richard was saying that he was going to play hardball and handle it so that [John] could not practice law. I think [John] was visibly concerned about losing [his] main source of livelihood." And "there certainly was crying on my part and my wife's part" that John witnessed in relation to Richard Morrison's emails. IV R. 842-43.

When words expressly or implicitly accuse the plaintiff of criminal conduct, the words are considered defamatory per se. *Cluse v. H & E Equipment Services, Inc.*, No. 09-574 (La.App. Cir.3 03/31/2010); *Elmer v. Coplin*, 485 So.2d 171 (La. App. 2d Cir.), *writ den.*, 489 So.2d 246 (1986) ("Our state supreme court has ***28** defined defamation, and has held words which accuse a person of criminal acts are defamatory per se and damages are presumed."). When words are defamatory per se, the elements of falsity and malice are presumed. *Cluse*, supra.

As addressed in great detail earlier in this brief, the evidence at trial not only "reasonably," but, in fact, overwhelmingly, established, just as the Trial Court expressly found, that Mr. Morrison's extensive defamation as to Mr. Dietz, including accusations of criminal conduct, was comprised of allegations of Mr. Morrison which simply were *not* true and Mr. Morrison suffered damages extensively from the defamatory writings and verbal communications. *RJ*, 3-4, 6.

Mr. Morrison's argument that the "bar complaints were privileged" (note: Navajo Nation does not in any way afford any "privilege" as to bar complaints, is not only not accurate, but also does not warrant reversal of the Trial Court's defamation determination because, in addition to the fact that Mr. Morrison, waived any claim of privilege because, as the Trial Court found, Mr. Morrison intentionally circulated the defamatory 8 points to non-attorney, non-bar association associated third parties, who then further recirculated such to others, including completely private citizens and government officials, and, more importantly, it is the specific information, eight points or so of incredibly defamatory claims that Mr. Morrison and his agents, just as the Trial Court found, circulated extensively to various individuals, including a U.S. Federal Court Judge and a U.S. Attorney. *RJ*, p. 3 ("Mr. Morrison also assisted with the drafting of a letter to a federal prosecutor or federal judgment in Texas. This letter

contained versions of these allegations. Similarly Mr. Morrison assisted Mrs. Morrison with a letter to a U.S. State Dept. rep. containing versions of these allegations.").

As to Mr. Morrison's supposed "unclean hands" of Mr. Dietz precluding legal recovery as to the defamation claim, there are two why his argument should be rejected. First, Mr. Dietz cannot reasonably be said to have "unclean hands" as ***29** to his legal claims in this instance under the facts and circumstances as established during the six day bench trial. Second, the "unclean hands" legal doctrine is otherwise not applicable in this instance. *See Guilbeau v. Domingues*, 2014.LA.0003628, Id., ¶ 36 (La. Ct. App. 3, Oct. 1, 2014) (doctrine "prevents a litigant from maintaining an action if he must rely, even partially, on his own illicit or immoral act to establish a cause of action."). Mr. Dietz has not engaged in any "illicit or immoral act" and/or is not relying on such as a legal claim basis. *See id.*

Mr. Morrison's further argues that there was "no evidence" of damages. Mr. Morrison's assertions are simply untrue, as established by Mr. Dietz's wife, Iniani, testified in extensive detail as to the Morrisons' conduct, defamation and otherwise. II R. 336-39, II R. 364-65, II R. 336-39; 364-65; 376-80; as well as Mr. Dietz's mother (III R. 615-17); Mr. Dietz's brother (III R. 639-40); Mr. Dietz's father (IV R. 836; 840-44; 858-60; 867) and Mr. Dietz (IV R. 725-26)).

Moreover, an appellate court reviews a trial court's damage award using the "abuse of discretion" standard. *Miller v. LAMMICO*, 2007-1352 (La. 1/16/08), 973 So. 2d 693, 711; *Theriot v. Allstate Ins.*, 625 So.2d 1337, 1340 (La.1993).

VII. ALL OF THE TRIAL COURT FINDINGS ARE WELL SUPPORTED BY SUBSTANTIAL EVIDENCE AT TRIAL.

Mr. Morrison next argues there was not sufficient evidence for the Trial Court to determine "that [Mrs. Morrison] made unsupported accusations to criminal authorities in Mexico about John's activities" and that the "only evidence" of such was Mr. Dietz's "uncorroborated, self-serving testimony" and "paid Mexican attorneys." *App. Bri.*, p. 26. First, Mr. Dietz's testimony is competent evidence for consideration. Second, Mr. Morrison's admitted during his testimony that Mrs. Morrison was the source of his 8 or so defamatory points contained in his letters to the Bar Associations and U.S. and Mexican officials complaining of "criminal activity." (IV R. 881; 890; V R. 920). Mrs. Morrison also wrote Mr. ***30** Morrison an email stating she had gone to the Mexican DA or judge regarding criminal allegations and that Mr. Dietz should not be told. (V R. 981).

Additionally, regarding the Mexico attorneys qualified by the Trial Court as legal experts in Mexico criminal and civil law who testified at trial being "paid," does Mr. Morrison expect attorneys to take time to travel and take time to testify for free? It is respectfully submitted that the well-seasoned Trial Court judge in this instance has dealt with paid attorneys and other experts testifying on many occasions and is well qualified to form an opinion as to truthfulness and veracity.

Mr. Morrison next argues that "[e]ven if the court could reasonably claim jurisdiction over a Mexican property dispute involving a Mexico domiciliary." *App. Bri.*, p. 26. First, Mr. Morrison is, again, deliberately misrepresenting and mischaracterizing matters to this Court. The Trial Court in this instance did not "claim" "jurisdiction over a Mexican property dispute," the reality is that the Trial Court expressly refused to allow any legal claim or damages as to Mr. Dietz's real and personal property related losses ($99,000 claim) and bodyguard losses ($5,500 claim) in Mexico and such is extensively documented by way of the appeal issues and associated record references encompassed in Mr. Dietz's appellate brief filed with this Court as to the first appeal in this proceeding. *See Original Brief in Chief of Appellant John Dietz*, Louisiana Court of Appeal, Third Circuit, State of Louisiana, App. No. 13-00186-CA, pp. 31-33 (filed with this Court, April, 2013).

With regard to the attempted instigation of New York insurance fraud investigation, Mr. Morrison is, again, attempting to side-step the reality of trial, when asked "So in addition to the bar organizations you contacted the NY Insurance Fraud Unit; is that correct?" Mr. Morrison "That is correct." V.R. 975.

Lastly, Mr. Morrison's attempt to have this Court "take judicial notice" of the Mexico document he attached to his brief is, in addition to the document being irrelevant and inaccurate (Mr. Retana's fraudulent criminal charges and associated ***31** documentation) as testified to at trial by the two Mexico law qualified expert witnesses and other witnesses, is respectfully submitted to be improper that such be stricken from the record. *See e.g.*, *Paul Klopstock & Co., Inc. v. United Fruit Co.*, 171 La. 296, ¶ 27, (La. Sup. Ct. 1930) ("[n]ew evidence may not be introduced").

CONCLUSION AND PRAYER

It is respectfully submitted that Mr. Morrison's almost exclusively fact based challenges to the findings and conclusions of the factfinder, the Trial Court, are contrary to the great weight of persuasive evidence presented at trial and are also otherwise without legal merit, and/or constitute harmless error such that the challenges simply do not rise to a level which warrants reversal of the Trial Court's substantive findings and associated legal determinations.

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